

Court of Appeals, State of Michigan

ORDER

Gail R Dew v Tent Restaurant Operations Inc

Docket No. 279849

LC No. 06-633130-NO

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the July 19, 2007, order of the Wayne County Circuit Court is VACATED. At the hearing conducted on defendant's motion for summary disposition, which sought dismissal of plaintiff's premises liability claim, the trial court denied defendant's motion because "the area was dark where the Plaintiff fell, so there are special aspects." In finding that there was a special aspect, it can be inferred that the trial court implicitly ruled that the hazard posed by the dimly-lit staircase was open and obvious. Yet, the trial court failed to analyze if the special aspect rendered the staircase unreasonably dangerous even when used with reasonable and ordinary care. See *O'Donnell v Garasic*, 259 Mich App 576-578; 676 NW2d 213 (2003). Accordingly, this matter is REMANDED to the trial court for this analysis. The trial court should consider whether the risk posed by the dimly-lit staircase was "effectively unavoidable," such as a commercial building with only one exit for the general public where the floor is covered with standing water, or whether the dimly-lit staircase posed an unreasonably high risk of severe harm, such as "an unguarded thirty foot deep pit in the middle of a parking lot." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 518-519; 629 NW2d 384 (2001).

Because defendant failed to provide plaintiff's response to the motion for summary disposition, this Court is unable to conduct a review in the same manner as the trial court to determine whether defendant was entitled to judgment as a matter of law. See *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998), after rem 469 Mich 487 (2003). Accordingly, this Court is unable to provide further relief beyond what is apparent from the transcript of the hearing.

The motion for stay is DENIED.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 28 2008

Date

Sandra Schultz Mengel

Chief Clerk